



General Assembly

**Substitute Bill No. 327**

February Session, 2004

\* \_\_\_\_\_SB00327PH\_\_\_\_\_031804\_\_\_\_\_\*

**AN ACT CONCERNING FAMILY AND MEDICAL LEAVE FOR ORGAN DONATION.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 5-248a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2004*):

3 (a) Each permanent employee, as defined in subdivision (21) of  
4 section 5-196, shall be entitled to the following: (1) A maximum of  
5 twenty-four weeks of family leave of absence within any two-year  
6 period upon the birth or adoption of a child of such employee, or upon  
7 the serious illness of a child, spouse or parent of such employee; and  
8 (2) a maximum of twenty-four weeks of medical leave of absence  
9 within any two-year period upon the serious illness of such employee  
10 or in order for such employee to serve as an organ or bone marrow  
11 donor. Any such leave of absence shall be without pay. Upon the  
12 expiration of any such leave of absence, the employee shall be entitled  
13 (A) to return to the employee's original job from which the leave of  
14 absence was provided or, if not available, to an equivalent position  
15 with equivalent pay, except that in the case of a medical leave, if the  
16 employee is medically unable to perform the employee's original job  
17 upon the expiration of such leave, the Personnel Division of the  
18 Department of Administrative Services shall endeavor to find other  
19 suitable work for such employee in state service, and (B) to all

20 accumulated seniority, retirement, fringe benefit and other service  
21 credits the employee had at the commencement of such leave. Such  
22 service credits shall not accrue during the period of the leave of  
23 absence.

24 (b) The leave of absence benefits granted by this section shall be in  
25 addition to any other paid leave benefits and benefits provided under  
26 subdivision (7) of subsection (a) of section 46a-60 which are otherwise  
27 available to the employee.

28 (c) Any permanent employee who requests a medical leave of  
29 absence due to the employee's serious illness or a family leave of  
30 absence due to the serious illness of a child, spouse or parent pursuant  
31 to subsection (a) of this section shall be required by the employee's  
32 appointing authority, prior to the inception of such leave, to provide  
33 sufficient written certification from the physician of such employee,  
34 child, spouse or parent of the nature of such illness and its probable  
35 duration. For the purposes of this section, "serious illness" means an  
36 illness, injury, impairment or physical or mental condition that  
37 involves (1) inpatient care in a hospital, hospice or residential care  
38 facility, or (2) continuing treatment or continuing supervision by a  
39 health care provider.

40 (d) Any permanent employee who requests a medical leave of  
41 absence in order to serve as an organ or bone marrow donor pursuant  
42 to subsection (a) of this section shall be required by the employee's  
43 appointing authority, prior to the inception of such leave, to provide  
44 sufficient written certification from the physician of such employee of  
45 the proposed organ or bone marrow donation and the probable  
46 duration of the employee's recovery period from such donation.

47 [(d)] (e) Any permanent employee who requests a family leave of  
48 absence pursuant to subsection (a) of this section shall submit to the  
49 employee's appointing authority, prior to the inception of such leave, a  
50 signed statement of the employee's intent to return to the employee's  
51 position in state service upon the termination of such leave.

52 [(e)] (f) Notwithstanding the provisions of subsection (b) of section  
53 38a-554, as amended, the state shall pay for the continuation of health  
54 insurance benefits for the employee during any leave of absence taken  
55 pursuant to this section. In order to continue any other health  
56 insurance coverages during such leave, the employee shall contribute  
57 that portion of the premium the employee would have been required  
58 to contribute had the employee remained an active employee during  
59 the leave period.

60 Sec. 2. Section 31-51ll of the general statutes, as amended by section  
61 2 of public act 03-213, is repealed and the following is substituted in  
62 lieu thereof (*Effective October 1, 2004*):

63 (a) (1) Subject to section 31-51mm, an eligible employee shall be  
64 entitled to a total of sixteen workweeks of leave during any twenty-  
65 four-month period, such twenty-four-month period to be determined  
66 utilizing any one of the following methods: [(1)] (A) Consecutive  
67 calendar years; [(2)] (B) any fixed twenty-four-month period, such as  
68 two consecutive fiscal years or a twenty-four-month period measured  
69 forward from an employee's first date of employment; [(3)] (C) a  
70 twenty-four-month period measured forward from an employee's first  
71 day of leave taken under sections 31-51kk to 31-51qq, inclusive; or [(4)]  
72 (D) a rolling twenty-four-month period measured backward from an  
73 employee's first day of leave taken under sections 31-51kk to 31-51qq,  
74 inclusive. [.]

75 (2) Such leave may be taken for one or more of the following:

76 [(1)] (A) Upon the birth of a son or daughter of the employee;

77 [(2)] (B) Upon the placement of a son or daughter with the employee  
78 for adoption or foster care;

79 [(3)] (C) In order to care for the spouse, or a son, daughter or parent  
80 of the employee, if such spouse, son, daughter or parent has a serious  
81 health condition; [or]

82       [(4)] (D) Because of a serious health condition of the employee; or

83       (E) In order to serve as an organ or bone marrow donor.

84       (b) Entitlement to leave under [subdivision (1) or (2)] subparagraph  
85 (A) or (B) of subdivision (2) of subsection (a) of this section may accrue  
86 prior to the birth or placement of a son or daughter when such leave is  
87 required because of such impending birth or placement.

88       (c) (1) Leave under [subdivision (1) or (2)] subparagraph (A) or (B)  
89 of subdivision (2) of subsection (a) of this section for the birth or  
90 placement of a son or daughter may not be taken by an employee  
91 intermittently or on a reduced leave schedule unless the employee and  
92 the employer agree otherwise. Subject to subdivision (2) of this  
93 subsection concerning an alternative position, subdivision (2) of  
94 subsection (f) of this section concerning the duties of the employee and  
95 subdivision (5) of subsection (b) of section 31-51mm concerning  
96 sufficient certification, leave under [subdivision (3) or (4)]  
97 subparagraph (C) or (D) of subdivision (2) of subsection (a) of this  
98 section for a serious health condition may be taken intermittently or on  
99 a reduced leave schedule when medically necessary. The taking of  
100 leave intermittently or on a reduced leave schedule pursuant to this  
101 subsection shall not result in a reduction of the total amount of leave to  
102 which the employee is entitled under subsection (a) of this section  
103 beyond the amount of leave actually taken.

104       (2) If an employee requests intermittent leave or leave on a reduced  
105 leave schedule under [subdivision (3) or (4)] subparagraph (C), (D) or  
106 (E) of subdivision (2) of subsection (a) of this section that is foreseeable  
107 based on planned medical treatment, the employer may require the  
108 employee to transfer temporarily to an available alternative position  
109 offered by the employer for which the employee is qualified and that  
110 (A) has equivalent pay and benefits and (B) better accommodates  
111 recurring periods of leave than the regular employment position of the  
112 employee, provided the exercise of this authority shall not conflict  
113 with any provision of a collective bargaining agreement between such

114 employer and a labor organization which is the collective bargaining  
115 representative of the unit of which the employee is a part.

116 (d) Except as provided in subsection (e) of this section, leave  
117 granted under subsection (a) of this section may consist of unpaid  
118 leave.

119 (e) (1) If an employer provides paid leave for fewer than sixteen  
120 workweeks, the additional weeks of leave necessary to attain the  
121 sixteen workweeks of leave required under sections 5-248a, as  
122 amended by this act, and 31-51kk to 31-51qq, inclusive, may be  
123 provided without compensation.

124 (2) (A) An eligible employee may elect, or an employer may require  
125 the employee, to substitute any of the accrued paid vacation leave,  
126 personal leave or family leave of the employee for leave provided  
127 under [subdivision (1), (2) or (3)] subparagraph (A), (B) or (C) of  
128 subdivision (2) of subsection (a) of this section for any part of this  
129 sixteen-week period of such leave under said subsection.

130 (B) An eligible employee may elect, or an employer may require the  
131 employee, to substitute any of the accrued paid vacation leave,  
132 personal leave, or medical or sick leave of the employee for leave  
133 provided under [subdivision (3) or (4)] subparagraph (C), (D) or (E) of  
134 subdivision (2) of subsection (a) of this section for any part of the  
135 sixteen-week period of such leave under said subsection, except that  
136 nothing in section 5-248a, as amended by this act, or 31-51kk to 31-  
137 51qq, inclusive, shall require an employer to provide paid sick leave or  
138 paid medical leave in any situation in which such employer would not  
139 normally provide any such paid leave.

140 (f) (1) In any case in which the necessity for leave under  
141 [subdivision (1) or (2)] subparagraph (A) or (B) of subdivision (2) of  
142 subsection (a) of this section is foreseeable based on an expected birth  
143 or placement of a son or daughter, the employee shall provide the  
144 employer with not less than thirty days' notice, before the date of the  
145 leave is to begin, of the employee's intention to take leave under said

146 [subdivision (1) or (2)] subparagraph (A) or (B), except that if the date  
147 of the birth or placement of a son or daughter requires leave to begin  
148 in less than thirty days, the employee shall provide such notice as is  
149 practicable.

150 (2) In any case in which the necessity for leave under [subdivision  
151 (3) or (4)] subparagraph (C), (D) or (E) of subdivision (2) of subsection  
152 (a) of this section is foreseeable based on planned medical treatment,  
153 the employee (A) shall make a reasonable effort to schedule the  
154 treatment so as not to disrupt unduly the operations of the employer,  
155 subject to the approval of the health care provider of the employee or  
156 the health care provider of the son, daughter, spouse or parent of the  
157 employee, as appropriate; and (B) shall provide the employer with not  
158 less than thirty days' notice, before the date the leave is to begin, of the  
159 employee's intention to take leave under said [subdivision (3) or (4)]  
160 subparagraph (C), (D) or (E), except that if the date of the treatment  
161 requires leave to begin in less than thirty days, the employee shall  
162 provide such notice as is practicable.

163 (g) In any case in which a husband and wife entitled to leave under  
164 subsection (a) of this section are employed by the same employer, the  
165 aggregate number of workweeks of leave to which both may be  
166 entitled may be limited to sixteen workweeks during any twenty-four-  
167 month period, if such leave is taken: (1) Under [subdivision (1) or (2)]  
168 subparagraph (A) or (B) of subdivision (2) of subsection (a) of this  
169 section; or (2) to care for a sick parent under [subdivision (3)]  
170 subparagraph (C) of said subsection (a).

171 (h) Unpaid leave taken pursuant to sections 5-248a, as amended by  
172 this act, and 31-51kk to 31-51qq, inclusive, shall not be construed to  
173 affect an employee's qualification for exemption under chapter 558.

174 (i) Notwithstanding the provisions of sections 5-248a, as amended  
175 by this act, and 31-51kk to 31-51qq, inclusive, all further rights granted  
176 by federal law shall remain in effect.

177 Sec. 3. Section 31-51mm of the general statutes is repealed and the

178 following is substituted in lieu thereof (*Effective October 1, 2004*):

179 (a) An employer may require that request for leave based on a  
180 serious health condition in [subdivision (3) or (4)] subparagraph (C) or  
181 (D) of subdivision (2) of subsection (a) of section 31-51ll, as amended  
182 by this act, be supported by a certification issued by the health care  
183 provider of the eligible employee or of the son, daughter, spouse or  
184 parent of the employee, as appropriate. The employee shall provide, in  
185 a timely manner, a copy of such certification to the employer.

186 (b) Certification provided under subsection (a) of this section shall  
187 be sufficient if it states:

188 (1) The date on which the serious health condition commenced;

189 (2) The probable duration of the condition;

190 (3) The appropriate medical facts within the knowledge of the  
191 health care provider regarding the condition;

192 (4) (A) For purposes of leave under [subdivision (3)] subparagraph  
193 (C) of subdivision (2) of subsection (a) of section 31-51ll, as amended  
194 by this act, a statement that the eligible employee is needed to care for  
195 the son, daughter, spouse or parent and an estimate of the amount of  
196 time that such employee needs to care for the son, daughter, spouse or  
197 parent; and (B) for purposes of leave under [subdivision (4)]  
198 subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll,  
199 as amended by this act, a statement that the employee is unable to  
200 perform the functions of the position of the employee;

201 (5) In the case of certification for intermittent leave or leave on a  
202 reduced leave schedule for planned medical treatment, the dates on  
203 which such treatment is expected to be given and the duration of such  
204 treatment;

205 (6) In the case of certification for intermittent leave or leave on a  
206 reduced leave schedule under [subdivision (4)] subparagraph (D) of  
207 subdivision (2) of subsection (a) of section 31-51ll, as amended by this

208 act, a statement of the medical necessity of the intermittent leave or  
209 leave on a reduced leave schedule, and the expected duration of the  
210 intermittent leave or reduced leave schedule; and

211 (7) In the case of certification for intermittent leave or leave on a  
212 reduced leave schedule under [subdivision (3)] subparagraph (C) of  
213 subdivision (2) of subsection (a) of section 31-51ll, as amended by this  
214 act, a statement that the employee's intermittent leave or leave on a  
215 reduced leave schedule is necessary for the care of the son, daughter,  
216 parent or spouse who has a serious health condition, or will assist in  
217 their recovery, and the expected duration and schedule of the  
218 intermittent leave or reduced leave schedule.

219 (c) (1) In any case in which the employer has reason to doubt the  
220 validity of the certification provided under subsection (a) of this  
221 section for leave under [subdivision (3) or (4)] subparagraph (C) or (D)  
222 of subdivision (2) of subsection (a) of section 31-51ll, as amended by  
223 this act, the employer may require, at the expense of the employer, that  
224 the eligible employee obtain the opinion of a second health care  
225 provider designated or approved by the employer concerning any  
226 information certified under subsection (b) of this section for such leave.

227 (2) A health care provider designated or approved under  
228 subdivision (1) of this subsection shall not be employed on a regular  
229 basis by the employer.

230 (d) (1) In any case in which the second opinion described in  
231 subsection (c) of this section differs from the opinion in the original  
232 certification provided under subsection (a) of this section, the  
233 employer may require, at the expense of the employer, that the  
234 employee obtain the opinion of a third health care provider designated  
235 or approved jointly by the employer and the employee concerning the  
236 information certified under subsection (b) of this section.

237 (2) The opinion of the third health care provider concerning the  
238 information certified under subsection (b) of this section shall be  
239 considered to be final and shall be binding on the employer and the



240 employee.

241 (e) The employer may require that the eligible employee obtain  
 242 subsequent recertifications on a reasonable basis, provided the  
 243 standards for determining what constitutes a reasonable basis for  
 244 recertification may be governed by a collective bargaining agreement  
 245 between such employer and a labor organization which is the  
 246 collective bargaining representative of the unit of which the worker is  
 247 a part if such a collective bargaining agreement is in effect. Unless  
 248 otherwise required by the employee's health care provider, the  
 249 employer may not require recertification more than once during a  
 250 thirty-day period and, in any case, may not unreasonably require  
 251 recertification. The employer shall pay for any recertification that is not  
 252 covered by the employee's health insurance.

253 Sec. 4. Subsection (d) of section 31-51nn of the general statutes is  
 254 repealed and the following is substituted in lieu thereof (*Effective*  
 255 *October 1, 2004*):

256 (d) As a condition of restoration under subsection (a) of this section  
 257 for an employee who has taken leave under [subdivision (4)]  
 258 subparagraph (D) of subdivision (2) of subsection (a) of section 31-51ll,  
 259 as amended by this act, the employer may have a uniformly applied  
 260 practice or policy that requires each such employee to receive  
 261 certification from the health care provider of the employee that the  
 262 employee is able to resume work, except that nothing in this  
 263 subsection shall supersede a valid law of this state or a collective  
 264 bargaining agreement that governs the return to work of such  
 265 employees.

This act shall take effect as follows:	
Section 1	<i>October 1, 2004</i>
Sec. 2	<i>October 1, 2004</i>
Sec. 3	<i>October 1, 2004</i>
Sec. 4	<i>October 1, 2004</i>

<b>LAB</b>	<i>Joint Favorable Subst. C/R</i>	PH
<b>PH</b>	<i>Joint Favorable</i>	